Caltrans

Water Quality NewsFlash

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LA City/Burbank POTW Permits – *Supreme Court issues split decision* – The cities of Los Angeles and Burbank went to court to challenge the NPDES permits issued to their publicly owned treatment works (POTW), which provide tertiary-level treatment to sewage prior to discharging it to the LA River. The cities contended that the permits were overly stringent, costly, unreasonable, and unlawful under both federal and state law (including CEQA). The trial court ruled that California law (Water Code Sections 13241 and 13263) requires the Regional Board to weigh the economic burden on the POTWs against the expected environmental benefits of reducing pollutants in the wastewater discharge. The Appeals Court disagreed. The Supreme Court has now issued an opinion that makes a distinction between federal and state requirements for wastewater discharge.

The Court determined that the Regional Board does not have to consider economic factors when imposing pollutant restrictions that are *less stringent* than the applicable federal standards. However, when the Board is considering permit limits *more stringent* than federal law requires, these numeric limitations are subject to "economic considerations" and the Board must take into account such factors as the wastewater discharger's cost of compliance. In a separate opinion, one judge noted: "In light of the Board's initial failure to consider costs of compliance and its repeated failure to conduct required triennial reviews, the result here is an unseemly bureaucratic bait-and-switch that we should not endorse….In these times of tight fiscal budgets, it is difficult to imagine imposing additional financial burdens on municipalities without at least allowing them to present alternative views." The Supreme Court remanded the case to the trial court to determine which requirements are federal minimum requirements and which are state add-ons. This may be a difficult distinction since federal law authorizes states to set local water quality standards.

This decision may have implications for municipal stormwater permits. The current minimum federal requirement is compliance with *maximum extent practicable* (MEP) pollutant removal. Compliance with water quality standards, which is very difficult for stormwater, is a discretionary decision left to the states. Decision: http://www.courtinfo.ca.gov/opinions/documents/S119248.PDF

Areas of Special Biological Significance – *Dischargers testify* – The California Ocean Plan bans discharges of wastewater, including stormwater, to ASBS. The Ocean Plan allows exceptions, but only when the discharger can demonstrate that the stormwater will not affect "natural" water quality. Representatives from the California Stormwater Quality Association (CASQA), LA County, Monterey County, Pacific Grove, Pebble Beach/Carmel, and Caltrans, testified during a State Water Resources Control Board workshop on April 7 that an alternative approach should be used to regulate these discharges. The speakers identified several problems with the current approach including the excessive cost, impacts of re-routing runoff around ASBS (many miles in some cases), engineering limitations based on design storm, the difficulty and cost of obtaining an exception, and legitimacy of CEQA documentation for an exception. More on ASBS: http://www.waterboards.ca.gov/plnspols/oplans/asbs.html